

6/12/2015

Notice of Settlement - CCAEJ v. James Hardie - Case No. 5:15-cv-00144 PA

From: gk@gideonlaw.net
Subject: Notice of Settlement - CCAEJ v. James Hardie - Case No. 5:15-cv-00144 PA
Date: Fri, June 12, 2015 2:52 pm
To: christine.ennis@usdoj.gov
Cc: richard.norwood@usdoj.gov, "sarah.lu@usdoj.gov" marie.quasius@klgates.com" <john.bjorkman@klgates.com>

Ms. Ennis, Mr. Norwood and Ms. Lu:

Please see attached notice of settlement, executed proposed settlement agreement and letter from Rose Foundation in the referenced case.

Copies are also being mail served today in compliance with 40 CFR Section 135.5, and on the DOJ Citizen Suit Coordinator P.O. Box.

The complaint in the case was served in compliance with 40 CFR Section 135.4 on January 23, 2015 on the agencies and DOJ.

This should trigger the 45 day review period.

I am also copying Defendant's lawyers John Bjorkman and Marie Quasius.

Let us know should you have any questions on the documents.

Best,

Gideon Kracov
Attorney at Law
801 S. Grand Ave., 11th Fl.
Los Angeles, CA 90017
p 213-629-2071
f 213-623-7755
GK@GideonLaw.net

www.GideonLaw.net

Attachments:

CCA-EJ-James Hardie Settlement Agreement FINAL.signed.pdf

Size: 5.7 M

Type: application/pdf

NOTICE.SETTL.FILED.pdf

Size: 1.6 M

Type: application/pdf

HardieRoseStip6.8.15 (1).pdf

Size: 595 k

Type: application/pdf

1 Gideon Kracov (State Bar No. 179815)
2 LAW OFFICE OF GIDEON KRACOV
3 801 S. Grand Avenue, 11th Floor
4 Los Angeles, CA 90017-4645
5 Tel: (213) 629-2071
6 Fax: (213) 623-7755
7 Email: gk@gideonlaw.net

8 Attorneys for Plaintiff
9 CENTER FOR COMMUNITY ACTION
10 AND ENVIRONMENTAL JUSTICE

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA

13 CENTER FOR COMMUNITY
14 ACTION AND ENVIRONMENTAL
15 JUSTICE, a non-profit corporation,

16 Plaintiff,

17 vs.

18 JAMES HARDIE BUILDING
19 PRODUCTS, INC., a corporation,
20 DOES 1 through 10,

21 Defendants.
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27
28

Case No: 5:15-cv-00144-PA-DBTx

JOINT NOTICE OF SETTLEMENT
AND REQUEST FOR ORDER TO
SHOW CAUSE RE: DISMISSAL

[PROPOSED ORDER SUBMITTED
HEREWITH]

[Assigned to the Honorable Percy
Anderson]

1 PLEASE TAKE NOTICE THAT Plaintiff CENTER FOR COMMUNITY
2 ACTION AND ENVIRONMENTAL JUSTICE (“CCA EJ” or “Plaintiff”) and
3 Defendant JAMES HARDIE BUILDING PRODUCTS, INC. (“HARDIE” or
4 “Defendant”) have reached settlement of all claims in the Action and have agreed to
5 language of a Settlement Agreement that currently is being executed by the parties.
6 The settlement is contingent upon the expiration of the federal agency 45-day review
7 period required by the federal Clean Water Act.¹
8

9
10 Consequently, the parties jointly request and good cause exists to set August 7,
11 2015, or as soon thereafter as is appropriate for the Court, as a date for an Order to
12 Show Cause for the filing of a Request for Dismissal of Plaintiff’s Claims with
13 Prejudice, or a Notice that the settlement is null and void. All other deadlines can be
14 vacated.
15
16

17 In accordance with the federal Clean Water Act, no order disposing of this
18 action may be entered prior to 45 days following the receipt of the proposed
19 Settlement Agreement by the United States Department of Justice and the National
20 and Region IX offices of the United States Environmental Protection Agency. See 40
21 C.F.R. § 135.5 (requiring the parties to provide notice to the Court of the 45-day
22 agency review period under 33 U.S.C. § 1365(c)). The regulatory agencies’ review
23
24
25

26
27 ¹ Title 33 of the United States Code Section 1365(c) provides that “[n]o consent
28 judgment shall be entered in an action in which the United States is not a party prior
to 45-days following the receipt of a copy of the proposed consent judgment by the
Attorney General and the Administrator.”

1 period will end on or about August 3, 2015; if any of the reviewing agencies object to
 2 the proposed Agreement, the parties would require additional time to meet and confer
 3 and attempt to resolve the agencies' concerns. The Settlement Agreement is not
 4 effective until after the regulatory agencies' review period expires and the Court
 5 enters the Dismissal.
 6

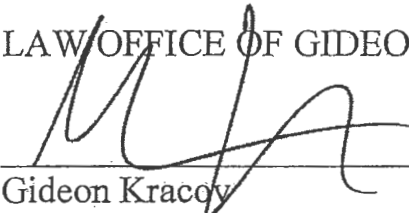
7
 8 Consequently, good cause exists to set August 7, 2015, or as soon thereafter as
 9 is appropriate for the Court, as a date for an Order to Show Cause for the filing of a
 10 Request for Dismissal of Plaintiff's Claims, or a Notice that the settlement is null and
 11 void. All other deadline dates, including but not limited to the deadline for Defendant
 12 to respond to the Complaint, can be vacated. If for some reason the settlement is not
 13 finalized and approved, Defendant expressly reserves all rights, including but not
 14 limited to the right to challenge the complaint and claims therein on any basis. A
 15 proposed order is submitted herewith.
 16
 17

18 I, Gideon Kracov, attest that all other signatories listed, and on whose
 19 behalf this filing is submitted, concur in the filing's content and have authorized this
 20 filing.
 21

22 Dated: June 12, 2015

LAW OFFICE OF GIDEON KRACOV

23
 24 By:


 Gideon Kracov
 Attorneys for Plaintiff
 CENTER FOR COMMUNITY ACTION
 AND ENVIRONMENTAL JUSTICE

1 Date: June 12, 2015

K&L GATES LLP

2 By: /S/ Per Local Rule 5-4.3.4(a)(2)(i)

3 John Bjorkman

4 Attorneys for Defendant

5 JAMES HARDIE BUILDING PRODUCTS,
6 INC.

PROOF OF SERVICE

I, Gideon Kracov, being duly sworn, deposes and says:

I am a citizen of the United States and work in Los Angeles County, California. I am over the age of eighteen years and am not a party to the within entitled action. My business address is: 801 S. Grand Ave., 11th Fl., LA, CA 90017. On 6/12, 2015 I served the attached: NOTICE OF SETTLEMENT; PROPOSED ORDER TO SHOW CAUSE RE DISMISSAL; PROOF OF SERVICE OF SUMMONS AND COMPLAINT on:

JOHN C. BJORKMAN
MARIE QUASIUS
K&L GATES
925 FOURTH AVE.
SUITE 2900
SEATTLE, WA 98104-1158

ATTORNEYS FOR DEFENDANT JAMES HARDIE BLDG. PRODUCTS

XXX by placing a true copy thereof enclosed in a sealed envelope, with postage thereon fully prepaid, in the United States Post Office mail box at 801 S. Grand Ave., Los Angeles, California, addressed as set forth above. I am readily familiar with my firm's practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on the same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date of postage meter date is more than 1 day after date of deposit for mailing in affidavit.

I declare under penalty of perjury, according to the laws of the State of California, that the foregoing is true and correct.

Executed this 6/12, 2015 at Los Angeles, California.


Gideon Kracov



June 8, 2015

Richard Norwood
Environment & Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, D.C. 20044-7415

Re: Center for Community Action and Environmental Justice v. James Hardie Building Products, Inc. (Case No: CV 15-00144-PA)

Dear Mr. Norwood,

This letter is intended to provide assurance that I have received the proposed Settlement Agreement between the Center for Community Action and Environmental Justice and James Hardie Building Products, Inc., and that I am authorized by my Board of Directors to make the following binding commitments on behalf of the Rose Foundation.

- 1) I understand that the Rose Foundation should receive funds from James Hardie Building Products, Inc. as specified in the Settlement Agreement.
- 2) The Rose Foundation shall only use these James Hardie Building Products, Inc. funds for environmentally beneficial projects in the Santa Ana River watershed and the San Bernardino/Riverside County area relating to water quality improvements, and Rose shall endeavor to apply the funds to projects within 50 miles of the Facility (ie – Fontana, CA). If the Rose Foundation cannot identify a suitable project within 50 miles of the Facility, then the funds shall be used on any applicable project in the watersheds described above. None of the funds shall be used to pay attorney's fees.
- 3) Within 30 days after the funds have been disbursed, the Rose Foundation shall send a report to the Justice Department, the Court and the Parties describing how the funds were utilized and demonstrating conformance with the nexus of the Settlement Agreement.

Rose Foundation for Communities and the Environment

The Rose Foundation is a 501(c)(3) public charity (tax ID#94-3179772). Its mission is to support grassroots initiatives to inspire community action to protect the environment, consumers and public health. To fulfill this mission, the Rose Foundation conducts the following activities:

- Raise money to award as grants to qualified non-profit organizations conducting charitable operations. The Foundation does not fund political lobbying activities prohibited by Section 501(c)(3) of the IRS Code.
- Work directly in schools and in the community to encourage environmental stewardship and civic participation.
- Help government efforts to control pollution and protect the environment by encouraging community engagement in local, state and federal research and policy development.

Within this broad range of activities, all of the Rose Foundation's work revolves around one or more of the following strategic themes:

- Build and maintain a bridge between the community and organized philanthropy.
- Protect the natural environment, public health, and community and consumer rights.
- Promote collaboration between labor, environmental, business, consumer and social interests.
- Cultivate a new generation of environmental stewards and social policy leaders.
- Respect the inalienable rights protected by our nation's constitution, and the essential human rights to clean air, clean water, and individual dignity and privacy.

The Rose Foundation is governed by a Board of Directors. Grant applicants are required to submit written proposals, which must include at a minimum specific information about the goals, activities and projected outcomes of the proposed project, background about the charitable applicant, budget information, and a specific funding request. The Foundation may require additional information in order to fully evaluate the application. Applications are first screened by Foundation staff. Staff then makes recommendations to the Foundation Board for action. The Foundation requires all projects to submit written reports within one year of receipt of the grant award describing work conducted under the grant, thereby providing an accountability mechanism over funds awarded. Annual audits by the certified public accounting firm Levy and Powers are posted on the Foundation's website www.rosefdn.org.

I hope this provides you with the information you require. Please do not hesitate to contact me with any questions, or for additional information at (510) 658-0702 or tlittle@rosefdn.org.

Sincerely,



Tim Little, Executive Director

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF CLAIMS

This Settlement Agreement and Mutual Release of Claims ("AGREEMENT") is entered into by and between Center for Community Action and Environmental Justice ("CCA EJ"), and James Hardie Building Products, Inc. ("HARDIE") (collectively, the "SETTLING PARTIES"), with respect to the following facts and objectives:

RECITALS

WHEREAS, CCA EJ is a non-profit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. Penny Newman is the Executive Director of CCA EJ;

WHEREAS, HARDIE owns and operates a facility which produces fiber cement products located at 10901 Elm Avenue, Fontana, California (the "Facility"), from which it discharges storm water pursuant to State Water Resources Control Board Water Quality Order No. 97-03-DWQ, National Pollutant Discharge Elimination System General Permit No. CAS000001, Requirements for Storm Water Discharges Associated with Industrial Activities Excluding Construction Activities (hereinafter, the "General Permit"). Beginning July 1, 2015, the General Permit will be replaced by State Water Resources Control Board Water Quality Order No. 2014-0057, General Permit for Storm Water Discharges Associated With Industrial Activities, Order NPDES NO. CAS000001 (the "2015 General Permit");

WHEREAS, on or about November 21, 2014, CCA EJ provided HARDIE with a Notice of Violation and Intent to File Suit ("60-Day Notice Letter") under Section 505 of the Federal Water Pollution Control Act (the "Act" or "Clean Water Act"), 33 U.S.C. § 1365;

WHEREAS, on January 23, 2015, CCA EJ filed its Complaint based on the Notice Letter in the United States District Court for the Central District of California (*Center for Community Action and Enviro. Justice v. James Hardie Building Products, Inc. – Case No. CV 15-00144-PA*). A true and correct copy of the Complaint, including the 60-Day Notice Letter, is attached hereto as Exhibit A and incorporated by reference;

WHEREAS, HARDIE denies any and all of CCAEJ's claims in its 60-Day Notice Letter and Complaint;

WHEREAS, the most recent sampling results of stormwater discharges at the Facility indicate the Facility's positive efforts to demonstrate compliance with the General Permit;

WHEREAS, CCAEJ and HARDIE, through their authorized representatives and without either adjudication of CCAEJ's claims or admission by HARDIE of any alleged violation or other wrongdoing, have chosen to resolve in full CCAEJ's allegations in the 60-Day Notice Letter and Complaint through settlement and avoid the cost and uncertainties of further litigation; and

WHEREAS, CCAEJ and HARDIE have agreed that it is in their mutual interest to enter into this AGREEMENT setting forth the terms and conditions appropriate to resolving CCAEJ's allegations set forth in the 60-Day Notice Letter and Complaint.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, CCAEJ and HARDIE hereby agree as follows:

EFFECTIVE DATE

1. The term "Effective Date," as used in this AGREEMENT, shall mean the date on which the District Court enters the Order dismissing the action described in Paragraph 2 of this AGREEMENT.

COMMITMENTS OF CCAEJ

2. **Stipulation to Dismiss and [Proposed] Order.** Within ten (10) calendar days of the expiration of the Agencies' review period specified in Paragraph 16 below, CCAEJ shall file a Request to Dismiss and [Proposed] Order thereon pursuant to the Federal Rules of Civil Procedure with the United States District Court for the Central District of California ("District Court"), with this AGREEMENT attached and incorporated by reference, specifying that CCAEJ is dismissing all claims in CCAEJ's Complaint with prejudice. Consistent with Paragraphs 22 and 23 herein, the Request to Dismiss and [Proposed] Order shall state that the District Court

will maintain jurisdiction through April 14, 2017, or through the conclusion of any proceeding to enforce this AGREEMENT, for purposes of resolving any disputes between the SETTLING PARTIES with respect to any provision of this AGREEMENT. If the District Court chooses not to enter the Order, this AGREEMENT shall be null and void.

COMMITMENTS OF HARDIE

3. **Compliance with General Permit.** HARDIE agrees to operate the Facility in compliance with the applicable requirements of the General Permit and the 2015 General Permit once it is effective.

4. **Implemented Storm Water Controls.** HARDIE agrees that the Facility shall maintain in good working order all storm water collection and filtering systems currently installed or to be installed pursuant to this AGREEMENT and perform existing housekeeping measures as described in the version of the Stormwater Pollution Prevention Plan ("SWPPP") for the Facility dated February 9, 2015, or as amended.

5. **Additional Best Management Practices.** Within THIRTY (30) calendar days after the Effective Date, unless otherwise noted, HARDIE shall have implemented the following best management practices ("BMPs") to improve the storm water pollution prevention measures at the 5 outfalls and industrial areas of the Facility depicted in the Drainage Plan/Site Map attached hereto as Exhibit B:

- Clean up the "bone yard" in the southeast corner of Facility (near Outfall #2) to remove scrap metal and other equipment and materials (e.g., new and used components of manufacturing equipment, an old forklift, empty drums used for storing metal parts)
- Implement a new drainage ditch maintenance program for the Storm Channel (also known as Declez Channel) at the south end of the Facility (near Outfalls # 2 and #3) including weekly removal of floating debris and (within sixty (60) days after the Effective Date) landscaping of the drainage ditch embankment to prevent erosion
- Store materials in enclosed storage containers or inside nearby buildings (e.g., sacks of silica carbide moved into C-13 building near Outfall #1)

- Sweep with an industrial dry sweeper such as the Nilfisk-Advance 5400 or an equivalent model near the C-13 plant (and the driveway leading from the plant building to the C-13 plant) two times per week and hand sweep the same area three times per day (Outfall #1)
- Install the following catch basin filters by September 30, 2015:
 - Outfall #1: L-Shaped BioMedia Filter Screen (immediately upstream of the discharge to the ditch on the east side of the Facility)
 - Outfall #4: Flume Filter with Biomedia, 52" wide (immediately upstream of the discharge to Elm Avenue which leads to the municipal stormwater system catch basin at the southwest corner of the Facility)
 - Outfall #5: 1 Flume Filter with Biomedia and 1 BioMediaGreen filter screen in the same grate inlet next to the driveway from the Employee Parking Lot to Elm Avenue which leads to the municipal stormwater system catch basin at the southwest corner of the Facility
 - Throughout Facility: HARDIE will install "Grate Inlet Skimmers-GISB-MF" in all of the grate inlets onsite, with several upstream of Outfall #2 and one in the catch basin upstream of Outfall #3.

6. **Monitoring.** HARDIE shall implement a monitoring and reporting plan at the Facility as follows:

- a. Once the 2015 General Permit is in effect, the sampling frequency and protocols in the 2015 General Permit shall apply.
- b. The Facility shall analyze each storm water sample taken as set out in the 2015 General Permit (presently, total suspended solids, pH, oil & grease and iron).

7. **Monitoring Results.** Results from the Facility's sampling and analysis during the term of this AGREEMENT shall be provided to CCAEJ by email and first-class mail within thirty (30) days of receipt of the sampling results by the Facility or its counsel.

8. **Meet and Confer Regarding Exceedances of Numeric Action Levels.** For purposes of this AGREEMENT, an "exceedance" will occur when the average of all analytical

results from all storm water samples taken at the Facility during a reporting year for a given parameter exceeds the following Numeric Action Values: Total Suspended Solids – 100 mg/L; pH – 6.0-9.0 s.u; oil & grease – 15 mg/L; iron – 1.0 mg/L.

If average analytical results of all storm water samples taken at all sampling locations at the Facility during the 2015-2016 or 2016-2017 wet seasons indicate that storm water discharges from the Facility exceed the Numeric Action Levels for any single parameter, HARDIE agrees to comply with the 2015 Permit's requirement to take responsive actions to improve its storm water best management practices in compliance with the terms of the 2015 General Permit, including all deadlines and documentation requirements therein.

If the 2015 General Permit requires HARDIE to conduct a Level 1 Evaluation during the term of this AGREEMENT, HARDIE will provide a draft by e-mail of its "Level 1 ERA Report"¹ prior to BMP implementation. CCAEJ will review and either approve or provide comments on the draft "Level 1 ERA Report" within twenty (20) days of receipt. If requested by CCAEJ within two (2) business days of receipt of the draft "Level 1 ERA Report," CCAEJ and the Facility shall meet and confer within five (5) business days after the end of this two (2) day period to discuss the contents of the draft "Level 1 ERA Report" and the adequacy of proposed measures to improve the quality of the Facility's storm water to levels at or below the Numeric Action Levels. Within two (2) business days of receipt of the draft "Level 1 ERA Report," CCAEJ can also request a site inspection pursuant to Paragraph 10 below to be conducted before HARDIE submits its "Level 1 ERA Report" which HARDIE shall permit as provided in Paragraph 10 within five (5) business days after the end of this two (2) day period. The SETTLING PARTIES agree to confer in good faith, but CCAEJ acknowledges that HARDIE retains sole discretion over the BMPs it selects in its "Level 1 ERA Report." CCAEJ also acknowledges that HARDIE retains final responsibility for compliance with the 2015 General Permit, subject to the right to dispute resolution provided in Paragraphs 22 and 23 below.

HARDIE shall implement any additional measures identified in documents prepared as part of its Level 1 response and will revise the Storm Water Pollution Prevention

¹ "ERA" stands for "Exceedance Response Action."

Plan ("SWPPP") for the Facility in compliance with the deadlines imposed by the 2015 General Permit.

9. If CCAEJ does not request a meet and confer process regarding the draft "Level 1 ERA Report" within the two (2) business day period to request a meet-and-confer as provided for in paragraph 8, CCAEJ shall waive any right to object to the adequacy of such documents and any BMPs proposed therein.

10. HARDIE shall permit representatives of CCAEJ to perform one (1) site visit to the Facility per year during normal daylight business hours during the term of this AGREEMENT, provided that CCAEJ provides the Facility via e-mail with at least one week prior written notice and coordinates the site visit for a date and time that will cause minimal disruption to the Facility's operations.

11. **Provision of Documents and Reports.** Until the Termination Date of this AGREEMENT, HARDIE shall provide CCAEJ with a copy of all documents submitted to the Santa Ana Regional Board ("Regional Board") or the State Water Resources Control Board ("State Board") concerning the Facility's storm water discharges, including but not limited to all documents and reports submitted to the Regional Board and/or State Board as required by the General Permit and the 2015 General Permit once it is effective. Such documents and reports shall be mailed to CCAEJ contemporaneously with submission to such agency.

12. **Amendment of SWPPP.** By July 1, 2015, the Facility shall amend the Facility's SWPPP to incorporate all changes, improvements, and BMPs required by the 2015 General Permit or specified in Paragraph 5 of this AGREEMENT. A copy of the amended SWPPP shall be provided to CCAEJ within thirty (30) days of completion.

13. **Mitigation Payment.** The amount of the mitigation payment is an acknowledgement that HARDIE has achieved substantial improvements in the storm water discharges from the Facility as part of its timely response to one-time operational and structural changes that temporarily impacted HARDIE's stormwater discharges. HARDIE has also dealt openly and in good faith with CCAEJ during this proceeding and is continuing to make significant efforts to improve the quality of its stormwater discharges. In recognition of the good

faith efforts by the Facility to comply with all aspects of the General Permit and the Clean Water Act, and in lieu of payment by HARDIE of any penalties, which have been disputed but may have been assessed in this action if it had been adjudicated adverse to HARDIE, the SETTLING PARTIES agree that HARDIE will pay the sum of seventeen thousand five hundred dollars (\$17,500.00) to the Rose Foundation for the sole purpose of providing grants to environmentally beneficial projects in the Santa Ana River watershed and the San Bernardino/Riverside County area relating to water quality improvements. The Rose Foundation shall endeavor to apply the funds to projects within 50 miles of the Facility. If the Rose Foundation cannot identify a suitable project within 50 miles of the Facility, then the funds shall be used on any applicable project in the watersheds described above. None of the funds paid to the Rose Foundation shall be used to pay attorneys' fees.

Payment shall be provided to the Rose Foundation as follows: Rose Foundation, 1970 Broadway, Suite 600, Oakland, CA 94612, Attn: Tim Little. Payment shall be made by HARDIE to the Rose Foundation and received within thirty (30) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. HARDIE shall copy CCAEJ with any correspondence and a copy of the check sent to the Rose Foundation. The Rose Foundation shall provide notice to the SETTLING PARTIES and the U.S. Department of Justice within thirty (30) days of when the funds are distributed by the Rose Foundation with the name of the grantee or recipient and the purpose for which the funds will be used.

14. **Fees, Costs, and Expenses.** As reimbursement for CCAEJ's investigative, expert and attorneys' fees and costs, HARDIE shall pay CCAEJ the sum of seventeen thousand dollars (\$17,000.00). Payment shall be made by HARDIE and received by CCAEJ within thirty (30) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT. Payment by HARDIE to CCAEJ shall be made in the form of a single check payable to "Law Office of Gideon Kracov" and shall constitute full payment for all costs of litigation, including investigative, expert and attorneys' fees and costs incurred by CCAEJ that have or could have been claimed in connection with CCAEJ's claims, up to and including the Effective Date of this AGREEMENT.

15. **Compliance Oversight Costs:** As reimbursement for CCAEJ's future fees and costs that will be incurred in order for CCAEJ to monitor HARDIE's compliance with this AGREEMENT and to effectively meet and confer and evaluate monitoring results for the Facility, HARDIE agrees to reimburse CCAEJ for its reasonable fees and costs incurred in overseeing the implementation of this AGREEMENT not to exceed the sum of two thousand dollars (\$2,000.00) which shall be made payable to "Law Office of Gideon Kracov" and received within thirty (30) calendar days of the District Court's entry of the Order dismissing the action described in Paragraph 2 of this AGREEMENT.

16. **Review by Federal Agencies.** CCAEJ shall submit this AGREEMENT to the U.S. EPA and the U.S. Department of Justice (hereinafter, the "Agencies") via certified mail, return receipt requested, within five (5) days after both of the SETTLING PARTIES have signed this AGREEMENT for review consistent with 40 C.F.R. § 135.5. The Agencies' review period expires forty-five (45) days after receipt of the AGREEMENT by both Agencies, as evidenced by the return receipts, copies of which shall be provided to HARDIE upon receipt by CCAEJ. In the event that the Agencies comment negatively on the provisions of this AGREEMENT, CCAEJ and HARDIE agree to meet and confer to attempt to resolve the issue(s) raised by the Agencies. If CCAEJ and HARDIE are unable to resolve any issue(s) raised by the Agencies in their comments, CCAEJ and HARDIE agree to expeditiously seek a settlement conference with the Magistrate Judge assigned to this matter to resolve the issue(s).

NO ADMISSION OR FINDING

17. Neither this AGREEMENT nor any payment pursuant to the AGREEMENT shall constitute evidence or be construed as a finding, adjudication, or acknowledgment of any fact, law or liability, nor shall it be construed as an admission of violation of any law, rule or regulation. However, this AGREEMENT may constitute evidence in actions seeking compliance with this AGREEMENT.

MUTUAL RELEASE OF LIABILITY AND COVENANT NOT TO SUE

18. In consideration of the above, and except in proceedings to enforce this AGREEMENT, the SETTLING PARTIES hereby forever and fully release each other and their

respective parents, affiliates, subsidiaries, divisions, insurers, successors, assigns, and current and former employees, attorneys, officers, directors and agents from any and all claims and demands of any kind, nature, or description whatsoever, and from any and all liabilities, damages, injuries, actions or causes of action, either at law or in equity, which the SETTLING PARTIES have against each other arising from CCAEJ's allegations and claims as set forth in the 60-Day Notice Letter and Complaint for storm water pollution discharges at the Facility up to and including the Termination Date of this AGREEMENT.

19. The SETTLING PARTIES acknowledge that they are familiar with section 1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

The SETTLING PARTIES hereby waive and relinquish any rights or benefits they may have under California Civil Code section 1542 with respect to any other claims against each other arising from, or related to, the allegations and claims as set forth in the 60-Day Notice Letter and Complaint for storm water pollution discharges at the Facility up to and including the Termination Date of this AGREEMENT.

20. CCAEJ agrees that, for the period beginning on the Effective Date and ending on the Termination Date, CCAEJ will not support other lawsuits, by providing financial assistance, personnel time or other affirmative actions, against or relating to the Facility, that may be proposed by other groups or individuals who would rely upon the citizen suit provision of the Clean Water Act to challenge the Facility's compliance with the Clean Water Act, the General Permit, or the 2015 General Permit.

TERMINATION DATE OF AGREEMENT

21. This AGREEMENT shall terminate on April 14, 2017, through the conclusion of any proceeding to enforce this AGREEMENT, or until the completion of any payment or affirmative duty required by the AGREEMENT; however, in the event that HARDIE provides

CCA EJ and the Regional Board with compliant sampling results of storm water discharges from two consecutive Qualifying Storm Events at the Facility pursuant to Paragraph 6 that do not exceed the Numeric Action Levels pursuant to Paragraph 8, then this AGREEMENT shall terminate on the date that such results are provided to CCA EJ and the Regional Board.

DISPUTE RESOLUTION PROCEDURES

22. Except as specifically noted herein, any disputes with respect to any of the provisions of this AGREEMENT, including Paragraph 3, shall be resolved through the following procedure. The SETTLING PARTIES agree to first meet and confer to resolve any dispute arising under this AGREEMENT. The party that desires to invoke informal dispute resolution must provide a notice by e-mail and first-class mail to the other party. In the event that the SETTLING PARTIES cannot resolve the dispute through informal dispute resolution within 60 days of the notice described above, the SETTLING PARTIES agree to submit the dispute via motion to the District Court.

23. In resolving any dispute arising from this AGREEMENT, the Court shall have discretion to award attorneys' fees and costs to either party. The relevant provisions of the then-applicable Clean Water Act and Rule 11 of the Federal Rules of Civil Procedure shall govern the allocation of fees and costs in connection with the resolution of any disputes before the District Court. The District Court shall award relief limited to compliance orders and awards of attorneys' fees and costs, subject to proof.

BREACH OF SETTLEMENT AGREEMENT

24. **Impossibility of Performance.** Where implementation of the actions set forth in this AGREEMENT, within the deadlines set forth in those paragraphs, becomes impossible, despite the timely good faith efforts of the SETTLING PARTIES, the party who is unable to comply shall notify the other in writing within fifteen (15) days of the date that the failure becomes apparent, and shall describe the reason for the non-performance. The SETTLING PARTIES agree to meet and confer in good faith concerning the non-performance and, where the SETTLING PARTIES concur that the non-performance was or is impossible, despite the timely good faith efforts of one of the SETTLING PARTIES, new performance deadlines shall be

established. In the event that the SETTLING PARTIES cannot timely agree upon the terms of such a stipulation, either of the SETTLING PARTIES shall have the right to invoke the dispute resolution procedure described herein.

GENERAL PROVISIONS

25. **Construction.** The language in all parts of this AGREEMENT shall be construed according to its plain and ordinary meaning, except as to those terms defined by law, in the General Permit, the 2015 General Permit, the Clean Water Act or specifically herein.

26. **Choice of Law.** This AGREEMENT shall be governed by the laws of the United States, and where applicable, the laws of the State of California.

27. **Severability.** In the event that any provision, section, or sentence of this AGREEMENT is held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

28. **Correspondence.** All notices required herein or any other correspondence pertaining to this AGREEMENT shall be sent by regular, certified, overnight mail, or e-mail as follows:

If to CCAEJ:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451
penny.newman@ccaej.org

And to:

Gideon Kracov
801 S. Grand Av., 11th Fl.
Los Angeles, CA 90017
Tel. (213) 629-2071
gk@gideonlaw.net

If to HARDIE:

Brad Kampbell
Facility Manager
James Hardie Building Products Inc.
10901 Elm Avenue
Fontana, CA 92337
Brad.Kampbell@jameshardie.com

And to:

Tom Pugh
James Hardie Building Products Inc.
1000 James Hardie Way
Pulaski, VA 24301
Tom.Pugh@Jameshardie.com

Nick Tzourtzouklis
US – Environmental Services Manager
James Hardie Building Products Inc.
820 Sparks Dr.
Cleburne TX. 76033
Nick.Tzourtzouklis@Jameshardie.com

Legal Department
James Hardie Building Products
231 S. LaSalle Street, Suite 2000
Chicago, IL 60604

John Bjorkman
Marie E. Quasius
K&L Gates LLP
925 4th Avenue, Suite 2900
Seattle, WA 98104
Tel. (206)-370-8195
john.bjorkman@klgates.com
marie.quasius@klgates.com

Notifications of communications shall be deemed submitted on the date that they are e-mailed, postmarked and sent by first-class mail or deposited with an overnight mail/delivery service. Any change of address or addresses shall be communicated in the manner described above for giving notices.

29. **Counterparts.** This AGREEMENT may be executed in any number of counterparts, all of which together shall constitute one original document. Telecopied, scanned (.pdf), and/or facsimiled copies of original signature shall be deemed to be originally executed counterparts of this AGREEMENT.

30. **Assignment.** Subject only to the express restrictions contained in this AGREEMENT, all of the rights, duties and obligations contained in this AGREEMENT shall inure to the benefit of and be binding upon the SETTLING PARTIES, and their successors and assigns.

31. **Modification of the Agreement:** This AGREEMENT, and any provisions herein, may not be changed, waived, discharged or terminated unless by a written instrument, signed by the SETTLING PARTIES.

32. **Full Settlement.** This AGREEMENT constitutes a full and final settlement of this matter.

33. **Integration Clause.** This is an integrated AGREEMENT. This AGREEMENT is intended to be a full and complete statement of the terms of the agreement between the SETTLING PARTIES and expressly supersedes any and all prior oral or written agreements covenants, representations and warranties (express or implied) concerning the subject matter of this AGREEMENT.

34. **Authority.** The undersigned representatives for CCAEJ and HARDIE each certify that he/she is fully authorized by the party whom he/she represents to enter into the terms and conditions of this AGREEMENT.

35. **Mutual Drafting.** This AGREEMENT was negotiated and prepared by both Parties and their respective attorneys. The Parties acknowledge and agree that this AGREEMENT shall not be deemed prepared or drafted by any one Party, and should be construed accordingly.

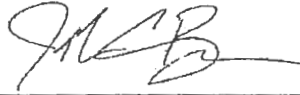
36. **Headings and Captions.** The headings and captions inserted into this AGREEMENT are for convenience only and in no way define, limit or otherwise describe the

scope or intent of this AGREEMENT, or any provision hereof, or in any way affect the interpretation of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

Date: June 11, 2015

DEFENDANT, JAMES HARDIE BUILDING
PRODUCTS, INC.



By: Joe Blasko
Title: Secretary & General Counsel

Date: _____, 2015

PLAINTIFF, CENTER FOR COMMUNITY
ACTION AND ENVIRONMENTAL JUSTICE

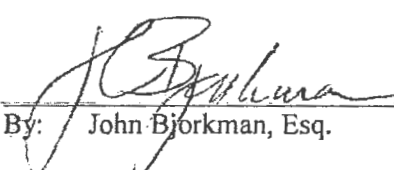
By: Penny Newman
Title: Executive Director

APPROVED AS TO FORM:

For DEFENDANT

Date: June 11, 2015

K&L GATES LLP



By: John Bjorkman, Esq.

For PLAINTIFF

Date: _____, 2015

LAW OFFICE OF GIDEON KRACOV

By: Gideon Kracov, Esq.

scope or intent of this AGREEMENT, or any provision hereof, or in any way affect the interpretation of this AGREEMENT.

The SETTLING PARTIES hereby enter into this AGREEMENT.

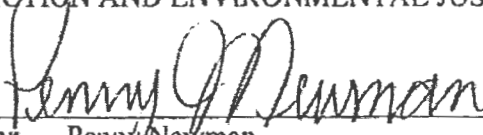
Date: _____, 2015

DEFENDANT, JAMES HARDIE BUILDING
PRODUCTS, INC.

By: Joe Blasko
Title: Secretary & General Counsel

Date: June 9, 2015

PLAINTIFF, CENTER FOR COMMUNITY
ACTION AND ENVIRONMENTAL JUSTICE


By: Penny Newman
Title: Executive Director

APPROVED AS TO FORM:

For DEFENDANT

Date: _____, 2015

K&L GATES LLP

By: John Bjorkman, Esq.

Date: 6/11, 2015

For PLAINTIFF
LAW OFFICE OF GIDEON KRACOV



By: Gideon Kracov, Esq.

EXHIBIT A

1 Gideon Kracov (State Bar No. 179815)
2 LAW OFFICE OF GIDEON KRACOV
3 801 S. Grand Avenue, 11th Floor
4 Los Angeles, CA 90017-4645
5 Tel: (213) 629-2071
6 Fax: (213) 623-7755
7 Email: gk@gideonlaw.net

8
9 Attorneys for Plaintiff
10 CENTER FOR COMMUNITY ACTION
11 AND ENVIRONMENTAL JUSTICE

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

11 CENTER FOR COMMUNITY
12 ACTION AND ENVIRONMENTAL
13 JUSTICE, a non-profit corporation,

14 Plaintiff,

15
16 vs.

17 JAMES HARDIE BUILDING
18 PRODUCTS, INC., a corporation,
19 DOES 1 through 10,

20 Defendants.

Case No. 5:15-cv-00144-PA

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF AND
CIVIL PENALTIES

(Federal Water Pollution Control Act, 33
U.S.C. §§ 1251 to 1387)

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23
24 CENTER FOR COMMUNITY ACTION AND ENVIRONMENTAL
25 JUSTICE ("CCAEP" or "Plaintiff"), a California non-profit corporation, by and
26 through its counsel, hereby alleges:
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28

1 **I. JURISDICTION AND VENUE**

2 1. This is a civil suit brought under the citizen suit enforcement provisions
3 of the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.* (the “Clean
4 Water Act” or “the Act”). This Court has subject matter jurisdiction over the parties
5 and the subject matter of this action pursuant to Section 505(a)(1)(A) of the Act, 33
6 U.S.C. § 1365(a)(1)(A), and 28 U.S.C. § 1331 (an action arising under the laws of the
7 United States). The relief requested is authorized pursuant to 28 U.S.C. §§ 2201-02
8 (power to issue declaratory relief in case of actual controversy and further necessary
9 relief based on such a declaration); 33 U.S.C. §§ 1319(b), 1365(a) (injunctive relief);
10 and 33 U.S.C. §§ 1319(d), 1365(a) (civil penalties).

11 2. On November 21, 2014, Plaintiff provided notice of Defendant’s
12 violations of the Act, and of its intention to file suit against Defendant, to the
13 Administrator of the United States Environmental Protection Agency (“EPA”); the
14 Administrator of EPA Region IX; the Executive Director of the State Water
15 Resources Control Board (“State Board”); the Executive Officer of the California
16 Regional Water Quality Control Board, Santa Ana Region (“Regional Board”); and to
17 Defendant JAMES HARDIE BUILDING PRODUCTS, INC. (“HARDIE”), as
18 required by the Act, 33 U.S.C. § 1365(b)(1)(A). A true and correct copy of the notice
19 letter is attached as Exhibit A, and is incorporated by reference.

20 3. More than sixty days have passed since notice was served on HARDIE
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1 and the State and federal agencies. Plaintiff is informed and believes, and thereupon
2 alleges, that neither the EPA nor the State of California has commenced or is
3 diligently prosecuting a court action to redress the violations alleged in this complaint.
4 This action's claim for civil penalties is not barred by any prior administrative penalty
5 under Section 309(g) of the Act, 33 U.S.C. § 1319(g).
6

7
8 4. Venue is proper in the Central District of California pursuant to Section
9 505(c)(1) of the Act, 33 U.S.C. § 1365(c)(1), because the source of the violations is
10 located within this judicial district.
11

12 **II. INTRODUCTION**

13 5. This complaint seeks relief for discharges of storm water and non-storm
14 water pollutants from Defendant HARDIE'S industrial gas processing facility located
15 at 10901 Elm Avenue, Fontana, California 92337 (hereinafter "Facility") in violation
16 of the Act and National Pollutant Discharge Elimination System ("NPDES") Permit
17 No. CA S000001, State Water Resources Control Board Water Quality Order
18 No. 91-13-DWQ, as amended by Water Quality Order No. 92-12-DWQ and Water
19 Quality Order No. 97-03-DWQ (hereinafter the "Permit" or "General Permit").
20 Defendant's failure to comply with the discharge, treatment technology, monitoring
21 requirements, and other procedural and substantive requirements of the Permit and the
22 Act are ongoing and continuous.
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1 **III. PARTIES**

2 6. Plaintiff CCAEJ is a non-profit public benefit corporation under the laws
3 of the State of California with its main office in Jurupa Valley, California. CCAEJ
4 dedicated to working with communities to advocate for environmental justice and
5 pollution prevention. CCAEJ and its members are deeply concerned with protecting
6 the environment in and around their communities, including the Santa Ana River
7 Watershed. To further these goals, CCAEJ actively seeks federal and state agency
8 implementation of the Act and other laws and, where necessary, directly initiates
9 enforcement actions on behalf of itself and its members.
10

11 7. CCAIEJ has members living in the community adjacent to the Facility
12 and the Santa Ana River Watershed. They enjoy using the Santa Ana River for
13 recreation and other activities. Members of CCAEJ use and enjoy the waters into
14 which Defendant has caused, is causing, and will continue to cause, pollutants to be
15 discharged. Members of CCAEJ use those areas to recreate and view wildlife, among
16 other things. Defendant's discharges of pollutants threaten or impair each of those
17 uses or contribute to such threats and impairments. Thus, the interests of CCAEJ's
18 members have been, are being, and will continue to be adversely affected by
19 Defendant's failure to comply with the Clean Water Act and the Permit. The relief
20 sought herein will redress the harms to Plaintiff caused by Defendant's activities.
21

22 8. Continuing commission of the acts and omissions alleged above will
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1 irreparably harm Plaintiff and its members, for which harm they have no plain, speedy
2 or adequate remedy at law.

3 9. Plaintiff alleges on information and belief that Defendant HARDIE, INC.
4 is a California corporation that operates the Facility in Fontana, California.
5

6 10. Upon information and belief, and upon that basis, Plaintiff alleges that
7 the true names, or capacities of DOES 1 through 10, inclusive (the "DOES"), whether
8 individual, corporate, associate or otherwise, are presently unknown to PLAINTIFF,
9 who therefore sue said Defendants by such fictitious names. Plaintiff will amend this
10 Complaint to show their true names and capacities when the same have been
11 ascertained. Whether or not HARDIE is associated with any other individual,
12 corporate, associate or otherwise was not immediately apparent through an initial
13 investigation completed by PLAINTIFF.
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17 11. HARDIE and DOES 1 through 10 are referred to collectively throughout
18 this Complaint as Defendant or Defendants.
19

20 **IV. STATUTORY BACKGROUND**

21 12. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of
22 any pollutant into waters of the United States, unless such discharge is in compliance
23 with various enumerated sections of the Act. Among other things, Section 301(a)
24 prohibits discharges not authorized by, or in violation of, the terms of an NPDES
25 permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.
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1 13. Section 402(p) of the Act establishes a framework for regulating
2 municipal and industrial storm water discharges under the NPDES program. 33
3 U.S.C. § 1342(p). States with approved NPDES permit programs are authorized by
4 Section 402(p) to regulate industrial storm water discharges through individual
5 permits issued to dischargers or through the issuance of a single, statewide general
6 permit applicable to all industrial storm water dischargers. 33 U.S.C. § 1342(p).
7
8

9 14. Pursuant to Section 402 of the Act, 33 U.S.C. § 1342, the Administrator
10 of the U.S. EPA has authorized California's State Board to issue NPDES permits,
11 including general NPDES permits, in California.
12

13 15. The State Board elected to issue a statewide general permit for industrial
14 storm water discharges. The State Board issued the General Permit on or about
15 November 19, 1991, modified the General Permit on or about September 17, 1992,
16 and reissued the General Permit on or about April 17, 1997, pursuant to Section
17 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).
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20 16. In order to discharge storm water lawfully in California, industrial
21 dischargers must comply with the terms of the General Permit or have obtained and
22 complied with an individual NPDES permit. 33 U.S.C. § 1311(a).
23

24 17. The General Permit contains several prohibitions. Effluent Limitation
25 B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their
26 storm water discharges through implementation of the Best Available Technology
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1 Economically Achievable (“BAT”) for toxic and nonconventional pollutants and the
2 Best Conventional Pollutant Control Technology (“BCT”) for conventional pollutants.
3 BAT and BCT include both nonstructural and structural measures. General Permit,
4 Section A(8). Discharge Prohibition A(2) of the General Permit prohibits storm water
5 discharges and authorized non-storm water discharges that cause or threaten to cause
6 pollution, contamination, or nuisance. Receiving Water Limitation C(1) of the
7 General Permit prohibits storm water discharges to any surface or ground water that
8 adversely impact human health or the environment. Receiving Water Limitation C(2)
9 of the General Permit prohibits storm water discharges that cause or contribute to an
10 exceedance of any applicable water quality standards contained in Statewide Water
11 Quality Control Plan or the applicable Regional Board’s Basin Plan. *See Baykeeper v.*
12 *Int’l Metals Ekco, Ltd.*, 619 F.Supp.2d 936, 945 (C.D. Cal. 2009).

17 18. In addition to absolute prohibitions, the General Permit contains a variety
18 of substantive and procedural requirements that dischargers must meet. Facilities
19 discharging, or having the potential to discharge, storm water associated with
20 industrial activity that have not obtained an individual NPDES permit must apply for
21 coverage under the State’s General Permit by filing a Notice of Intent to Comply
22 (“NOI”). The General Permit requires existing dischargers to have filed their NOIs
23 before March 30, 1992.

27 19. Dischargers must develop and implement a Storm Water Pollution
28

1 Prevention Plan ("SWPPP"). The SWPPP must describe storm water control facilities
2 and measures that comply with the BAT and BCT standards. The General Permit
3 requires that an initial SWPPP have been developed and implemented before October
4 1, 1992. The SWPPP must, among other requirements, identify and evaluate sources
5 of pollutants associated with industrial activities that may affect the quality of storm
6 and non-storm water discharges from the facility and identify and implement site-
7 specific best management practices ("BMPs") to reduce or prevent pollutants
8 associated with industrial activities in storm water and authorized non-storm water
9 discharges (Section A(2)). The SWPPP's BMPs must implement BAT and BCT
10 (Section B(3)). The SWPPP must include: a description of individuals and their
11 responsibilities for developing and implementing the SWPPP (Section A(3)); a site
12 map showing the facility boundaries, storm water drainage areas with flow pattern and
13 nearby water bodies, the location of the storm water collection, conveyance and
14 discharge system, structural control measures, impervious areas, areas of actual and
15 potential pollutant contact, and areas of industrial activity (Section A(4)); a list of
16 significant materials handled and stored at the site (Section A(5)); a description of
17 potential pollutant sources including industrial processes, material handling and
18 storage areas, dust and particulate generating activities, and a description of
19 significant spills and leaks, a list of all non-storm water discharges and their sources,
20 and a description of locations where soil erosion may occur (Section A(6)). The
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1 SWPPP must include an assessment of potential pollutant sources at the Facility and a
2 description of the BMPs to be implemented at the Facility that will reduce or prevent
3 pollutants in storm water discharges and authorized non-storm water discharges,
4 including structural BMPs where non-structural BMPs are not effective (Section A(7),
5 (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised
6 where necessary (Sections A(9), (10)).
7
8

9 20. Section C(11)(d) of the General Permit's Standard Provisions requires
10 dischargers to report any noncompliance to the Regional Board. *See also* Section
11 E(6). Section A(9) of the General Permit requires an annual evaluation of storm water
12 controls including the preparation of an evaluation report and implementation of any
13 additional measures in the SWPPP to respond to the monitoring results and other
14 inspection activities.
15
16

17 21. The General Permit requires dischargers commencing industrial activities
18 before October 1, 1992 to develop and implement an adequate written monitoring and
19 reporting program no later than October 1, 1992. Existing facilities covered under the
20 General Permit must implement all necessary revisions to their monitoring programs
21 no later than August 1, 1997.
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24 22. As part of their monitoring program, dischargers must identify all storm
25 water discharge locations that produce a significant storm water discharge, evaluate
26 the effectiveness of BMPs in reducing pollutant loading, and evaluate whether
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1 pollution control measures set out in the SWPPP are adequate and properly
2 implemented. Dischargers must conduct visual observations of these discharge
3 locations for at least one storm per month during the wet season (October through
4 May) and record their findings in their Annual Report. Dischargers must also collect
5 and analyze storm water samples from at least two storms per year. Section B(5)(a) of
6 the General Permit requires that dischargers "shall collect storm water samples during
7 the first hour of discharge from (1) the first storm event of the wet season, and (2) at
8 least one other storm event in the wet season. All storm water discharge locations
9 shall be sampled." Section B(5)(c)(i) requires dischargers to sample and analyze
10 during the wet season for basic parameters, such as pH, total suspended solids,
11 electrical conductance, and total organic content or oil & grease, certain industry-
12 specific parameters. Section B(5)(c)(ii) requires dischargers to sample for toxic
13 chemicals and other pollutants likely to be in the storm water discharged from the
14 facility. Section B(5)(c)(iii) requires discharges to sample for parameters dependent
15 on a facility's standard industrial classification ("SIC") code. Section B(7)(a)
16 indicates that the visual observations and samples must represent the "quality and
17 quantity of the facility's storm water discharges from the storm event." Section
18 B(7)(c) requires that "if visual observation and sample collection locations are
19 difficult to observe or sample...facility operators shall identify and collect samples
20 from other locations that represent the quality and quantity of the facility's storm
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1 water discharges from the storm event.”

2 23. The General Permit requires that facility operators “investigate the
3 facility to identify all non-storm water discharges and their sources. As part of this
4 investigation, all drains (inlets and outlets) shall be evaluated to identify whether they
5 connect to the storm drain system. All non-storm water discharges shall be described.
6 This shall include the source, quantity, frequency, and characteristics of the non-storm
7 water discharges and associated drainage area.” Section A(6)(a)(v). The General
8 Permit authorizes certain non-storm water discharges providing that the non-storm
9 water discharges are in compliance with Regional Board requirements; that the non-
10 storm water discharges are in compliance with local agency ordinances and/or
11 requirements; that best management practices (“BMPs”) are included in the Storm
12 Water Pollution Prevention Plan to (1) prevent or reduce the contact of non-storm
13 water discharges with significant materials or equipment and (2) minimize, to the
14 extent practicable, the flow or volume of non-storm water discharges; that the non-
15 storm water discharges do not contain significant quantities of pollutants; and that the
16 monitoring program includes quarterly visual observations of each non-storm water
17 discharge and its sources to ensure that BMPs are being implemented and are
18 effective (Special Conditions D). Section B(3) of the General Permit requires
19 dischargers to conduct visual observations of all drainage areas for the presence of
20 non-storm water discharges, to observe the non-storm water discharges, and maintain
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1 records of such observations.

2 24. Section B(14) of the General Permit requires dischargers to submit an
3 annual report by July 1 of each year to the executive officer of the relevant Regional
4 Board. The annual report must be signed and certified by an appropriate corporate
5 officer. Sections B(14), C(9), (10). Section A(9)(d) of the General Permit requires
6 the discharger to include in their annual report an evaluation of their storm water
7 controls, including certifying compliance with the General Permit. *See also* Sections
8 C(9), C(10) and B(14).
9

10 25. The General Permit does not provide for any mixing zones by
11 dischargers. The General Permit does not provide for any dilution credits to be
12 applied by dischargers.
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14 26. The Regional Board has identified beneficial uses of the Santa Ana River
15 Watershed and established water quality standards for the river and its tributaries in
16 “The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin”
17 (hereinafter “Basin Plan”). See California Regional Water Quality Control Board,
18 Santa Ana Region, The Water Quality Control Plan (Basin Plan) for the Santa Ana
19 River Basin (2011), available at
20 http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml.
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22 27. The beneficial uses of these waters include, among others, municipal and
23 domestic supply, agricultural supply, groundwater recharge, water contact recreation,
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1 non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and
2 wildlife habitat. The non-contact water recreation use is defined as “[u]ses of water
3 for recreational activities involving proximity to water, but not normally involving
4 contact with water where water ingestion is reasonably possible.” Id. at 3-3. These
5 uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing,
6 camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic
7 enjoyment in conjunction with the above activities.” Id. Contact recreation use
8 includes fishing and wading. Id. at 3-2. Visible pollution, including visible sheens
9 and cloudy or muddy water from industrial areas, impairs people’s use of the Santa
10 Ana River for contact and non-contact water recreation.
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14 28. The Basin Plan includes a narrative toxicity standard which states that
15 “[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic
16 resources to levels which are harmful to human health.” Id. at 4-18. The Basin Plan
17 includes a narrative oil and grease standard which states that “[w]aste discharges shall
18 not result in deposition of oil, grease, wax, or other material in concentrations which
19 result in a visible film or in coating objects in the water, or which cause a nuisance or
20 adversely affect beneficial uses.” Id. at 4-15. The Basin Plan includes a narrative
21 suspended and settleable solids standard which states that “waters shall not contain
22 suspended or settleable solids in amounts which cause a nuisance or adversely affect
23 beneficial uses” Id. at 4-16. The Basin Plan includes a narrative floatables
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1 standard which states that “[w]aste discharges shall not contain floating materials,
2 including solids, liquids, foam or scum, which cause a nuisance or adversely affect
3 beneficial uses.” Id. at 4-11. The Basin Plan includes a narrative color standard
4 which states that “[w]aste discharges shall not result in coloration of the receiving
5 waters which causes a nuisance or adversely affect beneficial uses.” Id. at 4-10. The
6 Basin Plan includes a narrative turbidity standard which states that “inland surface
7 waters . . . shall be free of changes in turbidity which adversely affect beneficial uses.
8 Id. at 4-18. The Basin Plan provides that “the pH of inland surface waters shall not be
9 raised above 8.5 or depressed below 6.5...” Id. at 4-15.

13 29. The EPA has published benchmark levels as guidelines for determining
14 whether a facility discharging industrial storm water has implemented the requisite
15 best available technology economically achievable (hereinafter “BAT”) and best
16 conventional pollutant control technology (hereinafter “BCT”). The following
17 benchmarks have been established for pollutants discharged by HARDIE: Total
18 Suspended Solids (TSS) – 100 mg/L, oil and grease – 15.0 mg/L (“O&G”), pH – 6-9
19 s.u., and Iron (Fe) – 1.0 mg/L. U.S. Environmental Protection Agency, Multi-Sector
20 General Permit for Stormwater Discharges Associated with Industrial Activity (2009)
21 52 (hereinafter “MSGP”). *See Baykeeper v. Int’l Metals Ekco, Ltd.*, 619 F.Supp.2d
22 936, 945 (C.D. Cal. 2009) (“There can be no reasonable dispute that the Benchmarks
23 are relevant to the inquiry as to whether a facility implemented BMPs”);
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1 *Waterkeepers Northern California v. AG Industrial Mfg. Inc.*, 375 F.3d 913, 919 n.5
2 (9th Cir. 2004) (plaintiff appropriately pointed to EPA benchmark values “as evidence
3 to support its claim that [the defendant] failed to implement adequate BMPs”);
4

5 30. Section 505(a)(1) and Section 505(f) of the Act provide for citizen
6 enforcement actions against any “person,” including individuals, corporations, or
7 partnerships, for violations of NPDES permit requirements. 33 U.S.C. §§1365(a)(1)
8 and (f), § 1362(5). An action for injunctive relief under the Act is authorized by 33
9 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil
10 penalties of up to \$32,500 per day per violation for all violations occurring through
11 January 12, 2009, and \$37,500 per day per violation for all violations occurring after
12 January 12, 2009, pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§
13 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 - 19.4.
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17 **V. STATEMENT OF FACTS**
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19 31. In its NOI, HARDIE certified that the Facility is classified under SIC
20 Code 3272 (Concrete and Gypsum Products). HARDIE is a fiber-cement product
21 company, specializing in lap sidings, vertical sidings, shingles, panels, pipes, and
22 ceramic tile backer boards. On information and belief, CCAEJ alleges that the 20-acre
23 Facility collects and discharges storm water from its industrial site into five or more
24 storm drain outfalls located at the Facility. The outfalls discharge into San Bernardino
25 County’s municipal storm sewer system, which flows into Declez Channel, which
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1 flows into the Santa Ana River.

2 32. On information and belief, Plaintiff alleges that the management
3 practices at the Facility do not prevent the sources of contamination described above
4 from causing the discharge of pollutants to waters of the United States.
5

6 33. Since at least January 26, 2010, HARDIE has taken samples or arranged
7 for samples to be taken of storm water discharges at the Facility. The sample results
8 were reported in the Facility's annual reports submitted to the Regional Board.
9 HARDIE certified each of those annual reports pursuant to Sections A and C of the
10 General Permit.
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13 34. Since at least January 26, 2010, the Facility has detected pH, TSS and
14 iron, in storm water discharged from the Facility. Levels of pH detected in the storm
15 water have been outside of the parameters for water quality standards in violation of
16 the Basin Plan. Levels of these pollutants detected in the Facility's storm water have
17 been in excess of EPA's numeric parameter benchmark values. As detailed in the
18 notice letter attached as Exhibit A and fully incorporated herein, the following dates
19 contained concentrations of pollutants in excess of the numeric water quality
20 standards and/or narrative water quality established in the Basin Plan: April 25, 2014,
21 February 6, 2014, May 6, 2013, April 1, 2013, January 25, 2013, November 8, 2012,
22 October 11, 2012, December 20, 2011, October 7, 2011 and January 26, 2010. This
23 information reflects data gathered from HARDIE's self-monitoring during the 2010-
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1 2011, 2011-2012, 2012-2013 and 2013-2014 wet seasons.

2 35. Discharges on the following dates at multiple outfalls from the Facility
3 contained concentrations of pollutants in excess of the numeric EPA water quality
4 benchmarks: April 25, 2014, February 6, 2014, May 6, 2013, October 11, 2012,
5 February 10, 2012, December 12, 2011, and January 30, 2010 for pH, TSS and/or iron
6 This information in reflects data gathered from HARDIE's self-monitoring during the
7 2010-2011, 2011-2012, 2012-2013 and 2013-2014 wet seasons.
8

9
10 36. The level of TSS in storm water detected by the Facility has exceeded the
11 benchmark value for TSS of 100 mg/L established by EPA. For example, on May 6,
12 2013, 800 mg/L was measured in outfall location #2.
13

14 37. The level of iron in storm water detected by the Facility has exceeded the
15 benchmark value of 1.0 mg/L established by EPA. For example, on May 6, 2013,
16 140.0 mg/L was measured in outfall location #1.
17

18 38. The level of pH in storm water detected by the Facility has exceeded the
19 benchmark value of 6-9 s.u. established by EPA. For example, on May 6, 2013, 9.8
20 s.u. was measured in outfall location #1.
21

22 39. CCAEJ also alleges on information and belief that HARDIE failed to
23 conduct visual observations in November 2009, March 2010, April 2010, April 2011,
24 November 2011, January 2012, March 2013, October 2013, November 2013,
25 December 2013, and March 2014 claiming that there were no qualifying rain events
26
27
28

1 when in fact there were numerous such events during these periods.

2 40. On information and belief, Plaintiff alleges that since at least January 23,
3 2010, Defendants have not implemented BAT and BCT at the Facility for discharges
4 of pH, TSS, iron, and other pollutants. Section B(3) of the General Permit requires
5 that Defendants implement BAT for toxic and nonconventional pollutants and BCT
6 for conventional pollutants by no later than October 1, 1992. As of the date of this
7 Complaint, the Facility has not implemented BAT and BCT.
8

9 41. On information and belief, Plaintiff alleges that since at least January 23,
10 2010, Defendants did not implement an adequate Storm Water Pollution Prevention
11 Plan for the Facility. Plaintiff is informed and believes, and thereupon alleges, that the
12 SWPPP prepared for the Facility does not set forth site-specific best management
13 practices for the Facility that are consistent with BAT or BCT for the Facility.
14 Plaintiff is informed and believes, and thereupon alleges, that the SWPPP prepared for
15 the Facility does not include an adequate assessment of potential pollutant sources,
16 structural pollutant control measures employed, a list of actual and potential areas of
17 pollutant contact, or an adequate description of best management practices to be
18 implemented at the Facility to reduce pollutant discharges. Plaintiff is informed and
19 believes, and thereupon alleges, that the SWPPP does not include each of the
20 mandatory elements required by Section A of the General Permit.
21

22 42. Information available to Plaintiff indicates that as a result of these
23
24
25
26
27
28

1 practices, storm water containing excessive pollutants is being discharged during rain
2 events from the Facility directly to the County of San Bernardino storm drain system,
3 which discharges to the Santa Ana River.
4

5 43. Plaintiff is informed and believes that Defendants did not submit to the
6 Regional Board, since at least January 23, 2010, an annual report, that is signed and
7 certified by the appropriate corporate officer, outlining the Facility's storm water
8 controls and accurately certifying compliance with the General Permit Pursuant to
9 Sections A(9)(d), B(14), and C(9), (10) of the General Permit.
10

11 44. Information available to Plaintiff indicates that Defendants have not
12 fulfilled the requirements set forth in the General Permit for discharges from the
13 Facility due to the continued discharge of contaminated storm water. Plaintiff is
14 informed and believes, and thereupon alleges, that all of the violations alleged in this
15 Complaint are ongoing and continuing.
16
17

18 **CLAIMS FOR RELIEF**
19

20 **FIRST CAUSE OF ACTION**

21 **Implement the Best Available and**
22 **Best Conventional Treatment Technologies**
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)

23 45. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
24 fully set forth herein.
25

26 46. The General Permit's SWPPP requirements and Effluent Limitation B(3)
27 require dischargers to reduce or prevent pollutants in their storm water discharges
28

1 through implementation of BAT for toxic and nonconventional pollutants and BCT
2 for conventional pollutants. Defendants have not implemented BAT and BCT at the
3 Facility for discharges of pH, TSS, iron, and other pollutants in violation of Effluent
4 Limitation B(3) of the General Permit.
5

6 47. Each day, since January 23, 2010, that Defendants did not develop and
7 implement BAT and BCT in violation of the General Permit is a separate and distinct
8 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
9

10 48. Defendants have not complied with the BAT/BCT requirements every day
11 since January 23, 2010. Defendants continue to not comply with the BAT/BCT
12 requirements each day that they fail to develop and fully implement BAT/BCT at the
13 Facility.
14
15

16 **SECOND CAUSE OF ACTION**
17 **Discharges of Contaminated Storm Water**
18 **in Violation of Permit Conditions and the Act**
19 **(Violations of 33 U.S.C. §§ 1311, 1342)**

20 49. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
21 fully set forth herein.

22 50. Discharge Prohibition A(2) of the General Permit requires that storm water
23 discharges and authorized non-storm water discharges shall not cause or threaten to
24 cause pollution, contamination, or nuisance. Receiving Water Limitations C(1) and
25 C(2) of the General Permit require that storm water discharges and authorized non-
26 storm water discharges shall not adversely impact human health or the environment,
27
28

1 and shall not cause or contribute to a violation of any water quality standards contained
2 in a Statewide Water Quality Control Plan or the applicable Regional Board's Basin
3 Plan.
4

5 51. Plaintiff is informed and believes, and thereupon alleges, that since at least
6 January 23, 2010, Defendants have discharged polluted storm water from the Facility
7 in excess of applicable water quality standards in violation of the Discharge
8 Prohibition A(2) of the General Permit.
9

10 52. Plaintiff is informed and believes, and thereupon alleges, that these
11 discharges of contaminated storm water are causing or contributing to the violation of
12 the applicable water quality standards in a Statewide Water Quality Control Plan and/or
13 the applicable Regional Board's Basin Plan in violation of Receiving Water Limitation
14 C(2) of the General Permit.
15
16

17 53. Plaintiff is informed and believes, and thereupon alleges, that these
18 discharges of contaminated storm water are adversely affecting human health and the
19 environment in violation of Receiving Water Limitation C(1) of the General Permit.
20
21

22 54. Every day, since at least January 23, 2010, that Defendants have
23 discharged and continue to discharge polluted storm water from the Facility in violation
24 of the General Permit is a separate and distinct violation of Section 301(a) of the Act,
25 33 U.S.C. § 1311(a). These violations are ongoing and continuous.
26
27
28

THIRD CAUSE OF ACTION

**Prepare, Implement, Review, and Update
an Adequate Storm Water Pollution Prevention Plan
(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

55. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

56. Section A and Provision E of the General Permit requires dischargers of storm water associated with industrial activity to develop and implement an adequate SWPPP no later than October 1, 1992.

57. Defendants have not developed and implemented an adequate SWPPP for the Facility.

58. Each day since January 23, 2010, that Defendants do not develop, implement and update an adequate SWPPP for the Facility is a separate and distinct violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).

59. Defendants have been in violation of the SWPPP requirements every day since January 23, 2010. Violation continues each day that an adequate SWPPP for the Facility is not developed and fully implemented.

**FOURTH CAUSE OF ACTION
Develop and Implement an
Adequate Monitoring and Reporting Program
(Violation of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

60. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if fully set forth herein.

61. Section B of the General Permit requires dischargers of storm water associated with industrial activity to have developed and be implementing a

1 monitoring and reporting program (including, *inter alia*, sampling and analysis of
2 discharges) no later than October 1, 1992.

3 62. Defendants have not developed and implemented an adequate monitoring
4 and reporting program for the Facility. Defendants' ongoing lack of an adequate
5 monitoring and reporting program is evidenced by, *inter alia*, the Facility's failure to
6 conduct visual observations as set forth above.
7
8

9 63. Each day since January 23, 2010, that Defendants did not develop and
10 implement an adequate monitoring and reporting program for the Facility in violation
11 of the General Permit is a separate and distinct violation of the General Permit and
12 Section 301(a) of the Act, 33 U.S.C. § 1311(a). The absence of requisite monitoring
13 and analytical results are ongoing and continuous.
14
15

16 **FIFTH CAUSE OF ACTION**
17 **Certification of Compliance in Annual Report**
18 **(Violations of Permit Conditions and the Act, 33 U.S.C. §§ 1311, 1342)**

19 64. Plaintiff re-alleges and incorporates all of the preceding paragraphs as if
20 fully set forth herein.

21 65. Defendants have not accurately certified compliance with the General
22 Permit in each of the annual reports submitted to the Regional Board since at least
23 January 23, 2010.
24

25 66. Each day since at least January 23, 2010, that Defendants do not
26 accurately certify compliance with the General Permit is a separate and distinct
27
28

1 violation of the General Permit and Section 301(a) of the Act, 33 U.S.C. § 1311(a).
2 Defendants continue to be in violation of the General Permit's certification requirement
3 each day they maintain an inaccurate certification of its compliance with the General
4 Permit.
5

6 **RELIEF REQUESTED**

7
8 Wherefore, Plaintiff respectfully requests that this Court grant the following
9 relief:

10 a. Declare Defendants to have violated and to be in violation of the Act as
11 alleged herein;
12

13 b. Enjoin Defendants from discharging polluted storm water from the
14 Facility unless authorized by the Permit;
15

16 c. Enjoin Defendants from further violating the substantive and
17 procedural requirements of the Permit;
18

19 d. Order Defendants to immediately implement storm water pollution
20 control and treatment technologies and measures that are equivalent to BAT or BCT
21 and prevent pollutants in the Facility's storm water from contributing to violations of
22 any water quality standards;
23

24 e. Order Defendants to comply with the Permit's monitoring and
25 reporting requirements, including ordering supplemental monitoring to compensate for
26 past monitoring violations;
27
28

1 f. Order Defendants to prepare a SWPPP consistent with the Permit's
2 requirements and implement procedures to regularly review and update the SWPPP;

3 g. Order Defendants to provide Plaintiff with reports documenting the
4 quality and quantity of their discharges to waters of the United States and their efforts
5 to comply with the Act and the Court's orders;
6

7 h. Order Defendants to pay civil penalties of \$37,500 per day per
8 violation for all violations pursuant to Sections 309(d) and 505(a) of the Act, 33 U.S.C.
9 §§ 1319(d), 1365(a) and 40 C.F.R. §§ 19.1 - 19.4;
10

11 i. Order Defendants to take appropriate actions to restore the quality of
12 waters impaired or adversely affected by their activities;
13

14 j. Award Plaintiff's costs (including reasonable investigative, attorney,
15 witness, compliance oversight, and consultant fees) as authorized by the Act, 33 U.S.C.
16 § 1365(d); and,
17

18 k. Award any such other and further relief, as this Court may deem
19 appropriate.
20

21 Dated: 1/23, 2015

Respectfully submitted,

22 By: 
23

24 Gideon Kracov
25 Attorneys for Plaintiff
26
27
28

EXHIBIT A

GIDEON KRACOV

Attorney at Law

801 South Grand Avenue
11th Floor
Los Angeles, California 90017

(213) 629-2071
Fax: (213) 623-7755

gk@gideonlaw.net
www.gideonlaw.net

November 21, 2014

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

James Hardie Building Products Inc.
C T Corporation System
Agent for Service of Process
818 West Seventh St. 2nd Fl.
Los Angeles, CA 90017

James Hardie Building Products Inc.
Luis Gries, CEO
26300 La Alameda, Ste 400
Mission Viejo, CA 92691

James Hardie Building Products Inc.
Haemish O'Donnell, Facility Coordinator
Chris Davis, Plant Manager
10901 Elm Avenue
Fontana, CA 92337

**RE: Notice Of Violations And Intent To File Suit Under The Federal Water
Pollution Control Act Concerning James Hardie Building Products, 10901
Elm Ave., Fontana, California 92337, WDID No. 8 36I010349**

Dear Mr. Gries, Mr. O'Donnell and Mr. Davis,

The Law Office of Gideon Kracov (hereinafter "**Office**") on behalf of the Center for Community Action and Environmental Justice (hereinafter "**CCA EJ**") is contacting you concerning Clean Water Act (hereinafter "**CWA**" or "**Act**") violations at James Hardie Building Products Inc.'s facility at 10901 Elm Avenue, Fontana, California 92337 (hereinafter "**Facility**") in San Bernardino County. This letter is being sent to you James Hardie Building Product Inc., Luis Gries, Chris Davis and Haemish O'Donnell, as the responsible owners, officers, or operators of the Facility (collectively hereinafter "**James Hardie**").

CCA EJ is a non-profit public benefit corporation dedicated to working with communities to advocate for environmental justice and pollution prevention. CCA EJ has individual members living in the community adjacent to the Facility and the Santa Ana River Watershed. CCA EJ

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and its individual members are deeply concerned with protecting the environment in and around their communities, including the Santa Ana River Watershed.

This letter addresses James Hardie's unlawful discharge of pollutants from the Facility through the municipal storm sewer system into Declez Channel and then into the Santa Ana River. The Facility is discharging storm water pursuant to National Pollutant Discharge Elimination System (hereinafter "**NPDES**") Permit No. CA S000001, California State Water Resources Control Board (hereinafter "**State Board**") Order No. 92-12-DWQ as amended by Order No. 97-03-DWQ (hereinafter "**General Permit**").¹ The WDID identification number for the Facility listed on documents submitted to the California Regional Water Quality Control Board, Santa Ana Region ("**Regional Board**") is 8 36I010349. The Facility is engaged in ongoing violations of the substantive and procedural requirements of the General Permit.

Section 505(b) of the CWA requires a citizen to give notice of intent to file suit sixty (60) days prior to the initiation of a civil action under Section 505(a) of the Act (33 U.S.C. § 1365(a)). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (hereinafter "**EPA**"), and the State in which the violations occur.

As required by the Act, this Notice of Violation and Intent to File Suit provides notice of the violations that have occurred, and continue to occur, at the Facility. Consequently, James Hardie is hereby placed on formal notice by CCAEJ that, after the expiration of sixty days from the date of this Notice of Violations and Intent to Sue, CCAEJ intends to file suit in federal court against James Hardie under Section 505(a) of the Clean Water Act (33 U.S.C. § 1365(a)), for violations of the CWA and General Permit. These violations are described more extensively below.

I. BACKGROUND.

James Hardie filed a Notice of Intent to Comply With the Terms of the General Permit to Discharge Storm Water Associated with Industrial Activity (hereinafter "**NOI**") and that NOI can be viewed on the State of California's State Water Resources Control Board website. In its NOI, James Hardie certified that the Facility is classified under SIC Code 3272 (Concrete and Gypsum Products). James Hardie is a fiber-cement product company, specializing in lap sidings, vertical sidings, shingles, panels, pipes, and ceramic tile backer boards. On information and belief, CCAEJ alleges that the 20-acre Facility collects and discharges storm water from its

¹ On April 1, 2014, the State Board reissued the General Permit, continuing its mandate that industrial facilities implement the best available technology economically achievable ("**BAT**") and best conventional pollutant control technology ("**BCT**") and, in addition, establishing numeric action levels mandating additional pollution control efforts. State Board Order 2014-0057-DWQ. The new permit, however, does not go into effect until July 1, 2015. Until that time, the current General Permit remains in full force and effect.

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industrial site into five or more storm drain outfalls located at the Facility. The outfalls discharge into the County's municipal storm sewer system, which flows into Declez Channel, which flows into the Santa Ana River.

The Regional Board has identified beneficial uses of the Santa Ana River Watershed and established water quality standards for the river and its tributaries in "The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin" (hereinafter "**Basin Plan**"). See California Regional Water Quality Control Board, Santa Ana Region, The Water Quality Control Plan (Basin Plan) for the Santa Ana River Basin (2011), *available at* http://www.swrcb.ca.gov/rwqcb8/water_issues/programs/basin_plan/index.shtml.

The beneficial uses of these waters include, among others, municipal and domestic supply, agricultural supply, groundwater recharge, water contact recreation, non-contact water recreation, warm freshwater habitat, cold freshwater habitat, and wildlife habitat. The non-contact water recreation use is defined as "[u]ses of water for recreational activities involving proximity to water, but not normally involving contact with water where water ingestion is reasonably possible." *Id.* at 3-3. These uses include, but are not limited to, picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities." *Id.* Contact recreation use includes fishing and wading. *Id.* at 3-2. Visible pollution, including visible sheens and cloudy or muddy water from industrial areas, impairs people's use of the Santa Ana River for contact and non-contact water recreation.

The Basin Plan includes a narrative toxicity standard which states that "[t]oxic substances shall not be discharged at levels that will bioaccumulate in aquatic resources to levels which are harmful to human health." *Id.* at 4-18. The Basin Plan includes a narrative oil and grease standard which states that "[w]aste discharges shall not result in deposition of oil, grease, wax, or other material in concentrations which result in a visible film or in coating objects in the water, or which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-15. The Basin Plan includes a narrative suspended and settleable solids standard which states that "waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses" *Id.* at 4-16. The Basin Plan includes a narrative floatables standard which states that "[w]aste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses." *Id.* at 4-11. The Basin Plan includes a narrative color standard which states that "[w]aste discharges shall not result in coloration of the receiving waters which causes a nuisance or adversely affect beneficial uses." *Id.* at 4-10. The Basin Plan includes a narrative turbidity standard which states that "inland surface waters . . . shall be free of changes in turbidity which adversely affect beneficial uses. *Id.* at 4-18. The Basin Plan provides that "the pH of inland surface waters shall not be raised above

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8.5 or depressed below 6.5...” *Id.* at 4-15. The Basin Plan also includes a Nitrate standard of 10 mg/L as Nitrogen. *Id.* at 4-14.

The EPA has published benchmark levels as guidelines for determining whether a facility discharging industrial storm water has implemented the requisite best available technology economically achievable (hereinafter “BAT”) and best conventional pollutant control technology (hereinafter “BCT”). The following benchmarks have been established for pollutants discharged by James Hardie: Total Suspended Solids (TSS) – 100 mg/L, pH – 6-9 s.u., and Iron (Fe) – 1.0 mg/L. U.S. Environmental Protection Agency, Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (2009) 52 (hereinafter “MSGP”).

II. ALLEGED VIOLATIONS OF THE NPDES PERMIT.

a. Discharges In Violation Of The Permit Not Subjected To BAT/BCT.

James Hardie has violated and continues to violate the terms and conditions of the General Permit. Section 402(p) of the Act prohibits the discharge of storm water associated with industrial activities, except as permitted under an NPDES permit (33 U.S.C. § 1342) such as the General Permit. The General Permit prohibits any discharges of storm water associated with industrial activities or authorized non-storm water discharges that have not been subjected to BAT or BCT. Effluent Limitation B(3) of the General Permit requires dischargers to reduce or prevent pollutants in their storm water discharges through implementation of BAT for toxic and nonconventional pollutants and BCT for conventional pollutants. BAT and BCT include both nonstructural and structural measures. General Permit, Section A(8). Conventional pollutants are Total Suspended Solids, Oil and Grease, pH, Biochemical Oxygen Demand, and Fecal Coliform. 40 C.F.R. § 401.16. All other pollutants are either toxic or nonconventional. *Id.* §§ 401.15, 401.16.

In addition, Discharge Prohibition A(1) of the General Permit prohibits the discharge of materials other than storm water (defined as non-storm water discharges) that discharge either directly or indirectly to waters of the United States. Discharge Prohibition A(2) of the General Permit prohibits storm water discharges and authorized non-storm water discharges that cause or threaten to cause pollution, contamination, or nuisance.

Receiving Water Limitation C(1) of the General Permit prohibits storm water discharges and authorized non-storm water discharges to surface or groundwater that adversely impact human health or the environment. Receiving Water Limitation C(2) of the General Permit also prohibits storm water discharges and authorized non-storm water discharges that cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan or the applicable Regional Board’s Basin Plan. The General Permit does not authorize the application of any mixing zones for complying with Receiving Water

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Limitation C(2). As a result, compliance with this provision is measured at the Facility's discharge monitoring locations.

James Hardie has discharged and continues to discharge storm water with unacceptable levels of TSS, pH, Iron, and other pollutants in violation of the General Permit. James Hardie's sampling and analysis results reported to the Regional Board confirm discharges of specific pollutants and materials other than storm water in violation of the Permit provisions listed above. Self-monitoring reports under the Permit are deemed "conclusive evidence of an exceedance of a permit limitation." *Sierra Club v. Union Oil*, 813 F.2d 1480, 1493 (9th Cir. 1988).

The following discharges of pollutants from the Facility contained concentrations of pollutants in excess of numeric water quality standards established in the Basin Plan, evidencing past and ongoing violations of General Permit Discharge Prohibitions A(1) and A(2), Effluent Limitation B(3) and Receiving Water Limitations C(1) and C(2).

Date	Parameter	Observed Concentration	Basin Plan or EPA Water Quality Standard	Outfall (as identified by the Facility)
4/25/2014	pH	9.2 s.u.	6.5-8.5 s.u.	#1 C13
2/6/2014	pH	9.1 s.u.	6.5-8.5 s.u.	#1 R&D Parking Lot
5/6/2013	pH	9.8 s.u.	6.5-8.5 s.u.	C13 Easement #1
1/26/10	pH	9.1 s.u.	6.5-8.5 s.u.	C13 Easement #1
12/7/09	pH	8.8 s.u.	6.5-8.5 s.u.	S Trench Mid Easement #3
4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	C13
4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	SE Easement #2

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4/26/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
4/26/2014	Narrative	Fairly Clear water with some leaves/debris	Basin Plan at 4-11; Basin Plan at 4-16	R&D Parking #4
4/26/2014	Narrative	Very cloudy water/debris/leaves, solids	Basin Plan at 4-11; Basin Plan at 4-16	Emp. Parking Ent #5
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	C13
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	SE Outfall
2/6/2014	Narrative	Cloudy water with debris floating	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
2/6/2014	Narrative	Leaves/debris	Basin Plan at 4-11	R&D Parking #4
2/6/2014	Narrative	Cloudy water/dirt/leaves	Basin Plan at 4-11; Basin Plan at 4-16	Emp. Parking Ent #5
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	C13
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	SE Outfall
5/6/2013	Narrative	Discharge cloudy/dirty	Basin Plan at 4-11; Basin Plan at 4-16	S Trench Mid Easement #3
5/6/2013	Narrative	Discharge had particles of debris, dirt & leaves	Basin Plan at 4-16	Emp. Parking Ent #5

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4/1/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
4/1/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
4/1/2013	Narrative	Discharge had leaves/dirt	Basin Plan at 4-16	Emp. Parking Ent #5
1/25/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
1/25/2013	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
1/25/2013	Narrative	Discharge had leaves/dirt	Basin Plan at 4-16	Emp. Parking Ent #5
11/8/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
11/8/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
10/11/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	SE Outfall
10/11/2012	Narrative	Discharge had particles/debris of dirt & leaves	Basin Plan at 4-16	S Trench Mid Easement #3
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	C13
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	SE Outfall

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12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	S Trench Mid Easement #3
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	R&D Parking #4
12/20/2011	Narrative	Some leaves debris	Basin Plan at 4-16	Emp. Parking Ent #5
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	C13
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	SE Outfall
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	S Trench Mid Easement #3
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	R&D Parking #4
10/7/2011	Narrative	Some leaves debris	Basin Plan at 4-16	Emp. Parking Ent #5
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	C13
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	SE Outfall
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	S Trench Mid Easement #3
1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	R&D Parking #4

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1/26/2010	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	Emp. Parking Ent #5
12/07/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	C13
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	SE Outfall
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	S Trench Mid Easement #3
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	R&D Parking #4
12/7/2009	Narrative	Slight debris (leaves/dirt)	Basin Plan at 4-16	Emp. Parking Ent #5

The information in the above table reflects data gathered from James Hardie's self-monitoring during the 2009-2010, 2012-2013 and 2013-2014 wet seasons. CCAEJ alleges that during each of these wet seasons and continuing through today, James Hardie has discharged storm water contaminated with pollutants at levels or observations that exceed or violate the one or more applicable water quality standards, including but not limited to each of the following:

- pH – 6.5 – 8.5 s.u. (Basin Plan);
- Floatables – Waste discharges shall not contain floating materials, including solids, liquids, foam or scum, which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-11);
- Suspended/Settleable Solids – Waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses. (Basin Plan at 4-16).

The following discharges of pollutants from the Facility contained concentrations of pollutants in excess of numeric water quality benchmarks established by EPA in the MGSP ("EPA Benchmarks"), evidencing past and ongoing violations of General Permit Discharge Prohibitions A(1) and A(2), Effluent Limitation B(3) and Receiving Water Limitations C(1) and C(2).

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Date	Parameter	Observed Concentration	EPA Benchmarks	Location (as identified by the Facility)
4/25/2014	pH	9.2 s.u.	6-9 s.u.	#1 C13
2/6/2014	pH	9.1 s.u.	6-9 s.u.	#1 R&D Parking Lot
5/6/2013	pH	9.8 s.u.	6-9 s.u.	C13 Easement #1
1/26/10	pH	9.1 s.u.	6-9 s.u.	C13 Easement #1
4/25/2014	TSS	1700 mg/L	100 mg/L	#1 C13
4/25/2014	TSS	630 mg/L	100 mg/L	#2 S.E. Outfall
4/25/2014	TSS	240 mg/L	100 mg/L	#5 Employee Parking
2/6/2014	TSS	510 mg/L	100 mg/L	#1 R&D Parking Lot
2/6/2014	TSS	800 mg/L	100 mg/L	#2 S.E. Outfall
2/6/2014	TSS	320 mg/L	100 mg/L	#4 C-13
5/6/2013	TSS	940 mg/L	100 mg/L	C13 Easement #1
5/6/2013	TSS	540 mg/L	100 mg/L	SE Easement #2

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1/26/2010	TSS	290 mg/L	100 mg/L	Emp. Parking Ent #5
4/25/2014	Iron	65 mg/L	1.0 mg/L	#1 C13
4/25/2014	Iron	21 mg/L	1.0 mg/L	#2 S.E. Outfall
4/25/2014	Iron	9.5 mg/L	1.0 mg/L	#5 Employee Parking
2/6/2014	Iron	31 mg/L	1.0 mg/L	#1 R&D Parking Lot
2/6/2014	Iron	23 mg/L	1.0 mg/L	#2 S.E. Outfall
2/6/2014	Iron	11 mg/L	1.0 mg/L	#4 C-13
2/6/2014	Iron	2.9 mg/L	1.0 mg/L	#5 Employee Parking
5/6/2013	Iron	140 mg/L	1.0 mg/L	C13 Easement #1
5/6/2013	Iron	16 mg/L	1.0 mg/L	SE Easement #2
5/6/2013	Iron	6.9 mg/L	1.0 mg/L	Emp. Parking Ent #5
10/11/2012	Iron	2.4 mg/L	1.0 mg/L	C13 Easement #1
10/11/2012	Iron	2.4 mg/L	1.0 mg/L	Emp. Parking Ent #5

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2/10/2012	Iron	2.1 mg/L	1.0 mg/L	SE Easement #2
12/12/2011	Iron	2.2 mg/L	1.0 mg/L	C13 Easement #1
12/12/2011	Iron	1.9 mg/L	1.0 mg/L	SE Easement #2
12/12/2011	Iron	1.2 mg/L	1.0 mg/L	S Trench Mid Easement #3
12/12/2011	Iron	2.1 mg/L	1.0 mg/L	R&D Parking #4
12/12/2011	Iron	1.2 mg/L	1.0 mg/L	Emp. Parking Ent #5
1/30/2011	Iron	2.8 mg/L	1.0 mg/L	C13 Easement #1
1/30/2011	Iron	1.2 mg/L	1.0 mg/L	S Trench Mid Easement #3
1/30/2011	Iron	1.5 mg/L	1.0 mg/L	Emp. Parking Ent #5

The information in the above table reflects data gathered from James Hardie's self-monitoring during the 2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 wet seasons. CCAEJ alleges that during each of those rainy seasons and continuing through today, James Hardie has discharged storm water contaminated with pollutants that exceed one or more applicable EPA Benchmarks, including, but not limited to, each of the following:

- Total Suspended Solids – 100 mg/L;
- pH – 6-9 s.u.;
- Iron – 1.0 mg/L.

CCAIEJ's investigation, including its review of James Hardie's analytical results documenting pollutant levels in the Facility's storm water discharges well in excess of applicable

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water quality standards and the EPA's benchmark values, indicate that James Hardie has not implemented BAT and BCT at the facility for its discharges of TSS, pH, Iron, and other pollutants in violation of Effluent Limitation B(3) of the General Permit. James Hardie was required to have implemented BAT and BCT by no later than October 1, 1992, or since the date the Facility opened. Thus, James Hardie is discharging polluted storm water associated with its industrial operations without having implemented BAT and BCT.

In addition, the numbers listed in the table above indicate that the Facility is discharging polluted storm water in violation of Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit. CCAEJ alleges that such violations also have occurred and will occur on other rain dates, including every significant rain event that has occurred since at least November 21, 2009 and that will occur at the Facility subsequent to the date of this Notice of Violation and Intent to File Suit. Attachment A, attached hereto, sets forth each of the specific rain dates on which CCAEJ alleges that James Hardie has discharged storm water containing impermissible levels of TSS, pH, Iron, and other pollutants in violation of Effluent Limitation B(3), Discharge Prohibitions A(1) and A(2) and Receiving Water Limitations C(1) and C(2) of the General Permit.²

These unlawful discharges from the Facility are ongoing. Each discharge of storm water containing any of these pollutants constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, James Hardie is subject to penalties for violations of the General Permit and the Act since November 21, 2009.

b. Failure To Develop And Implement An Adequate Monitoring And Reporting Program.

Section B of the General Permit describes the monitoring requirements for storm water and non-storm water discharges. Facilities are required to make monthly visual observations of storm water discharges (Section B(4)) and quarterly visual observations of both unauthorized and authorized non-storm water discharges (Section B(3)). Section B(5) requires facility operators to sample and analyze at least two storm water discharges from all storm water discharge locations during each wet season. Section B(7) requires that the visual observations and samples must represent the "quality and quantity of the facility's storm water discharges from the storm event."

² The rain dates in Attachment A are days on which an average of 0.1 or more rain fell as measured by a weather station located in Riverside approximately 14 miles away from the Facility. Data from the weather station is available at <http://www.ipm.ucanr.edu/WEATHER/SITES/riverside.html> (Last accessed on November 21, 2014). The rain dates also include days when the facility reported discharge in its Annual Reports.

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The above-referenced data was obtained from the Facility's monitoring program as reported in its Annual Reports submitted to the Regional Board. This data is evidence that the Facility has violated various Discharge Prohibitions, Receiving Water Limitations, and Effluent Limitations in the General Permit. To the extent the storm water data collected by James Hardie is not representative of the quality of the Facility's various storm water discharges and that the Facility failed to monitor all qualifying storm water discharges, CCAEJ alleges that the Facility's monitoring program violates Sections B(3), (4) and (7) of the General Permit.

CCAIEJ also alleges on information and belief that James Hardie failed to conduct visual observations in November 2009, March 2010, April 2010, April 2011, November 2011, January 2012, March 2013, October 2013, November 2013, December 2013, and March 2014 claiming that there were no qualifying rain events when in fact there were numerous such events during these periods.

The above violations are ongoing. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the federal Clean Water Act, James Hardie is subject to penalties for violations of the General Permit and the Act's monitoring and sampling requirements since November 21, 2009.

c. Failure To Analyze For Mandatory Parameters.

With some limited adjustments, facilities covered by the General Permit must sample two storm events per season from each of their storm water discharge locations. General Permit Section B(5)(a). Collected samples must be analyzed for Total Suspended Solids, pH, Specific Conductance and either Total Organic Carbon or O&G. *Id.* at Section B(5)(c)(i). Facilities must also analyze their storm water samples for "[t]oxic chemicals and other pollutants that are likely to be present in storm water discharges in significant quantities," including copper, lead, zinc, aluminum, chemical oxygen demand, and iron. *Id.* at Section B(5)(c)(ii); MSGP at 52, 102. Additionally, because James Hardie filed its NOI under SIC Code 3272, it must sample for the additional pollutants of Iron. *See* MSGP at 57, Table 8.E-1.

CCAIEJ's investigation of the James Hardie's monitoring data indicates that James Hardie failed to analyze for iron during the 2009-2010 wet season.

Each failure to analyze for mandatory parameters constitutes a separate violation of the General Permit and the Act. Consistent with the five-year statute of limitations applicable to citizen enforcement actions brought pursuant to the CWA, James Hardie is subject to penalties for violations of the General Permit and the Act since November 21, 2009.

d. Failure To Prepare, Implement, Review and Update An Adequate Storm Water Pollution Prevention Plan.

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Section A and Provision E(2) of the General Industrial Storm Water Permit require dischargers of storm water associated with industrial activity to develop, implement, and update an adequate storm water pollution prevention plan (hereinafter “SWPPP”) no later than October 1, 1992. Section A(1) and Provision E(2) requires dischargers who submitted an NOI pursuant to the General Permit to continue following their existing SWPPP and implement any necessary revisions to their SWPPP in a timely manner, but in any case, no later than August 1, 1997.

The SWPPP must, among other requirements, identify and evaluate sources of pollutants associated with industrial activities that may affect the quality of storm and non-storm water discharges from the facility and identify and implement site-specific best management practices (hereinafter “BMPs”) to reduce or prevent pollutants associated with industrial activities in storm water and authorized non-storm water discharges (General Permit, Section A(2)). The SWPPP must include BMPs that achieve BAT and BCT (Effluent Limitation B(3)). The SWPPP must include: a description of individuals and their responsibilities for developing and implementing the SWPPP (General Permit, Section A(3)); a site map showing the facility boundaries, storm water drainage areas with flow pattern and nearby water bodies, the location of the storm water collection, conveyance and discharge system, structural control measures, impervious areas, areas of actual and potential pollutant contact, and areas of industrial activity (General Permit, Section A(4)); a list of significant materials handled and stored at the site (General Permit, Section A(5)); a description of potential pollutant sources including industrial processes, material handling and storage areas, dust and particulate generating activities, a description of significant spills and leaks, a list of all non-storm water discharges and their sources, and a description of locations where soil erosion may occur (General Permit, Section A(6)).

The SWPPP also must include an assessment of potential pollutant sources at the Facility and a description of the BMPs to be implemented at the Facility that will reduce or prevent pollutants in storm water discharges and authorized non-storm water discharges, including structural BMPs where non-structural BMPs are not effective (General Permit, Section A(7), (8)). The SWPPP must be evaluated to ensure effectiveness and must be revised where necessary (General Permit, Section A(9),(10)). The SWPPP must also include a certification statement and signature (General Permit, Section C(10)).

CCAIEJ’s investigation of the conditions at the Facility as well as James Hardie’s Annual Reports indicate that James Hardie has been operating with an inadequately developed SWPPP in violation of the requirements set forth above. James Hardie has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary. James Hardie has been in continuous violation of Section A and Provision E(2) of the General Permit every day since November 21, 2009, at the very latest, and will continue to be in violation every day that James

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Hardie fails to prepare, implement, review, and update an effective SWPPP. James Hardie is subject to penalties for violations of the Order and the Act occurring since November 21, 2009.

e. Failure To File True And Correct Annual Reports.

Section B(14) of the General Industrial Storm Water Permit requires dischargers to submit an Annual Report by July 1st of each year to the executive officer of the relevant Regional Board. The Annual Report must be signed and certified by an appropriate corporate officer. General Permit, Sections B(14), C(9), C(10). Section A(9)(d) of the General Industrial Storm Water Permit requires the discharger to include in their annual report an evaluation of their storm water controls, including certifying compliance with the General Industrial Storm Water Permit. *See also* General Permit, Sections C(9) and (10) and B(14).

During the 2009-2010, 2010-2011, 2011-2012, 2012-2013, and 2013-2014 wet seasons, James Hardie inaccurately certified in the Annual Report that the facility was in compliance with the General Permit. Consequently, James Hardie has violated Sections A(9)(d), B(14), C(9) and C(10) of the General Industrial Storm Water Permit every time James Hardie failed to submit a complete or correct report and every time James Hardie or its agents failed to comply with the Act. James Hardie is subject to penalties for violations of Section (C) of the General Industrial Storm Water Permit and the Act occurring since November 21, 2009.

III. Persons Responsible For the Violations.

CCA EJ puts James Hardie Building Products Inc., Luis Gries, Chris Davis and Haemish O'Donnell on notice that they are the persons responsible for the violations described above. If additional persons are subsequently identified as also being responsible for the violations set forth above, CCA EJ puts James Hardie Building Products Inc., Luis Gries, Chris Davis and Haemish O'Donnell on notice that it intends to include those persons in this action.

IV. Name And Address Of Noticing Parties.

The name, address and telephone number of CCA EJ is as follows:

Penny Newman
Executive Director
Center for Community Action and Environmental Justice
P.O. Box 33124
Jurupa Valley, CA 92519
Tel. (951) 360-8451

V. Counsel.

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CCAIEJ has retained counsel to represent it in this matter. Please direct all communications to:

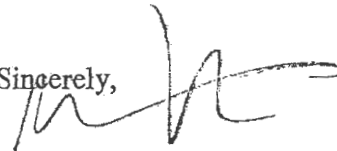
Gideon Kracov
The Law Office of Gideon Kracov
801 South Grand Avenue
11th Floor
Los Angeles, California 90017
Tel: (213) 629-2071
E-Mail: gk@gideonlaw.net

VI. Penalties.

Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4) each separate violation of the Act subjects James Hardie to a penalty of up to \$37,500 per day per violation. In addition to civil penalties, CCAIEJ will seek injunctive relief preventing further violations of the Act pursuant to Sections 505(a) and (d) (33 U.S.C. § 1365(a) and (d)) and such other relief as permitted by law. Lastly, Section 505(d) of the Act (33 U.S.C. § 1365(d)), permits prevailing parties to recover costs and fees, including attorneys' fees.

CCAIEJ believes this Notice of Violations and Intent to File Suit sufficiently states grounds for filing suit. CCAIEJ intends to file a citizen suit under Section 505(a) of the Act against James Hardie and its agents for the above-referenced violations upon the expiration of the 60-day notice period. However, during the 60-day notice period, CCAIEJ would be willing to discuss effective remedies for the violations noted in this letter. If you wish to pursue such discussions in the absence of litigation, CCAIEJ suggests that you initiate those discussions within the next 20 days so that they may be completed before the end of the 60-day notice period. CCAIEJ does not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Gideon Kracov
The Law Office of Gideon Kracov
Attorneys for Center for Community Action and
Environmental Justice

SERVICE LIST

Gina McCarthy, Administrator
U.S. Environmental Protection Agency
12000 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Thomas Howard, Executive Director
State Water Resources Control Board
P.O. Box 100
Sacramento, CA 95812-0100

Eric Holder, U.S. Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Citizen Suit Coordinator
Environment and Natural Resources Division
Law and Policy Section
P.O. Box 7415
Ben Franklin Station
Washington, DC 20044-7415

Jared Blumenfeld, Regional Administrator
U.S. EPA – Region 9
75 Hawthorne Street
San Francisco, CA 94105

Kurt V. Berchtold, Executive Officer
Santa Ana Regional Water Quality Control Board
3737 Main Street
Suite 500
Riverside, CA 92501-3348

*Served via Certified Mail, Return Receipt Requested.

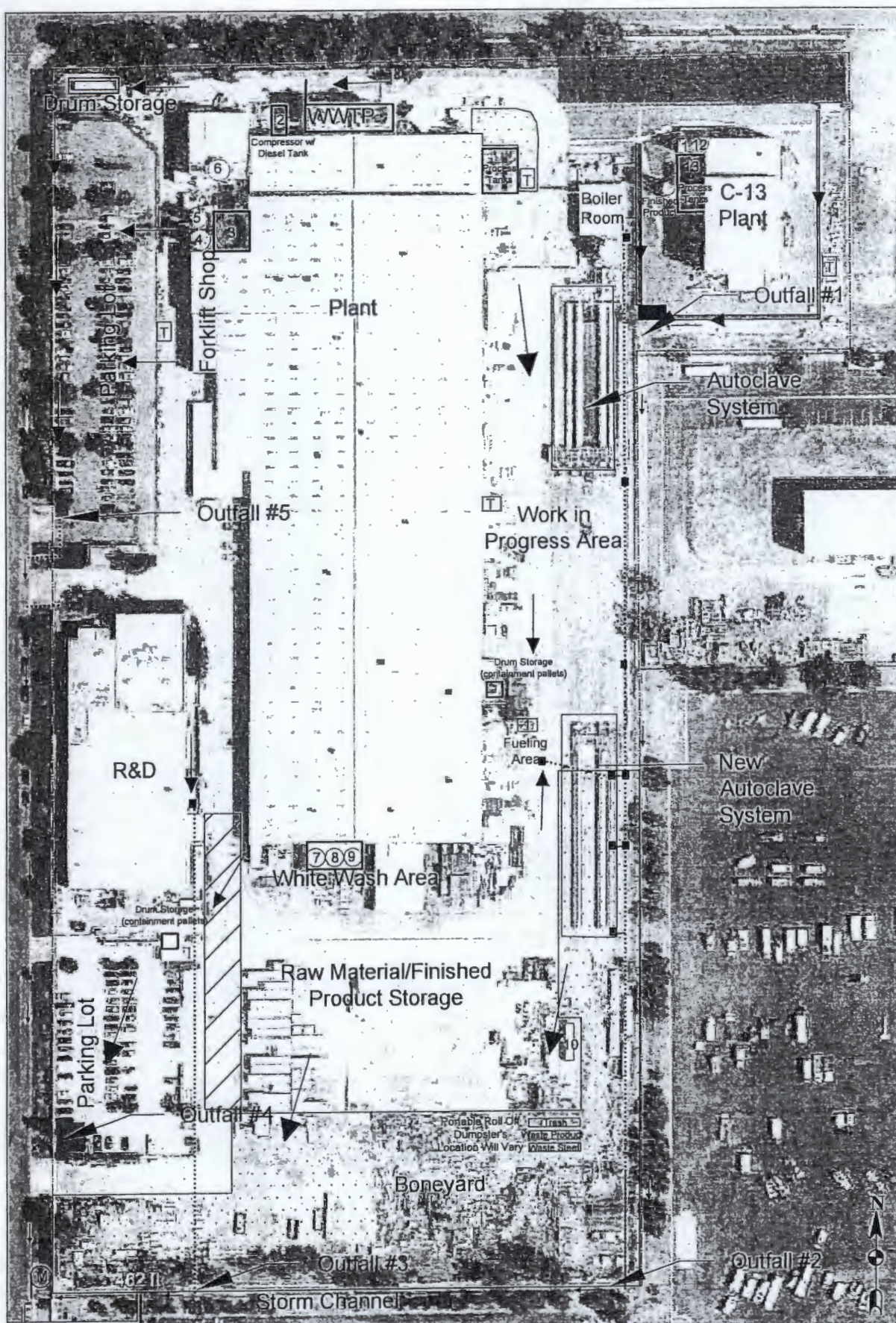
ATTACHMENT A

Rain Dates, James Hardie Building Products Inc., Fontana, California

11/28/2009	12/7/2009	12/12/2009
12/13/2009	1/17/2010	1/18/2010
1/19/2010	1/20/2010	1/21/2010
1/22/2010	1/26/2010	2/5/2010
2/6/2010	2/09/2010	2/22/2010
2/27/2010	3/04/2010	3/06/2010
4/05/2010	4/12/2010	4/20/2010
4/22/2010	11/08/2010	11/20/2010
11/21/2010	11/24/2010	12/05/2010
12/06/2010	12/16/2010	12/18/2010
12/19/2010	12/20/2010	12/21/2010
12/22/2010	12/25/2010	12/29/2010
1/02/2011	1/03/2011	1/30/2011
2/16/2011	2/18/2011	2/19/2011
2/25/2011	2/26/2011	3/20/2011
3/21/2011	3/23/2011	4/08/2011
5/18/2011	7/31/2011	10/05/2011
11/04/2011	11/06/2011	11/12/2011
11/20/2011	12/12/2011	1/21/2012
1/23/2012	2/15/2012	2/27/2012
3/17/2012	3/18/2012	4/11/2012
4/13/2012	4/25/2012	4/26/2012
8/30/2012	10/11/2012	11/08/2012

12/12/2012	12/13/2012	12/24/2012
12/29/2012	1/24/2013	1/25/2013
2/08/2013	2/19/2013	3/08/2013
3/09/2013	5/06/2013	7/20/2013
10/09/2013	11/21/2013	12/07/2013
2/06/2014	2/28/2014	3/01/2014
4/01/2014	4/02/2014	4/25/2014

EXHIBIT B



Legend

- | | |
|---|---|
| <ul style="list-style-type: none"> — Property Boundary → Direction of Flow ▨ Pervious Area ■ Landscape Area ■ L-Shaped BioMedia Filter Screen ■ Flume Filter with BioMedia ■ Grate Inlet Skimmer-GISS-MF ■ BioMedia Filter Screen | <ul style="list-style-type: none"> Underground Drain ▨ Shipping and Receiving Area ▨ Portable Dumpster — Containment Berm or Structure ▨ Storm Drain Culvert ⊙ Municipal Storm Drain ○ Tank |
|---|---|

*See Appendix I of the SWPPP for a description of each tank shown on this map.

**Operations not conducted inside buildings are directly exposed to precipitation.

***Landscaping areas inside



Associates Environmental
10052 Bolero Circle SE, Suite 202
Huntington Beach, CA 92648
(714) 916-4953 Fax (714) 363-6085

Prepared by: James Hardie Building Products
Storm Water Pollution Prevention Plan - Site Map

Job No.	Drawing Date	Revision	Drawing Number
15245	05/26/2015	00	40